Supreme Court, U.S.
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No. 00-1209

In the Supreme Court of the United States

OCTOBER TERM, 2000

DAVID LAWRENCE SOLOMON,

Petitioner,

–v.–

GRIEVANCE COMMITTEE FOR THE TENTH JUDICIAL DISTRICT,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE NEW YORK STATE COURT OF APPEALS

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Dated: February 1, 2001

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COUNTER-QUESTION PRESENTED FOR REVIEW

Whether an attorney may be subject to reciprocal discipline by the Appellate Division of the Supreme Court of the State of New York, Second Department, for conduct for which the attorney was previously disciplined by the Supreme Court of Florida?

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STATEMENT OF THE CASE

David Laurence Solomon (hereinafter referred to as "Petitioner") was suspended from the practice of law for a period of ninety-one days by the Order of the Supreme Court of Florida, dated February 26, 1998 (Pet. App. D).

The Grievance Committee For The Tenth Judicial District (hereinafter referred to as "Respondent") served a Notice and Application Pursuant to N.Y.C.R.R. 691.3 of the Rules Governing the Conduct of Attorneys, dated June 23, 1998, seeking reciprocal discipline by the Appellate Division, Second Department. Petitioner was advised of his rights pursuant to 22

N.Y.C.R.R. 691.3 to file within twenty days of service of the Notice, a verified statement setting forth any defense to the imposition of discipline as enumerated in subdivision (c) of 691.3 as follows:

1) That the procedure in the foreign judgment was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process, or

2) That there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duties, accept as final, the finding of the Court in the foreign judgment as to the attorney's misconduct, or

3) That the imposition of discipline by the Court would be unjust.

Petitioner demanded a hearing pursuant to his rights under 22 N.Y.C.R.R. 691.3(d). A hearing was conducted on May 4, 1999, at the offices of Respondent. At that hearing, Petitioner presented two witnesses who testified regarding the severity of discipline imposed by the Supreme Court of Florida. The Special Referee, John E. Mulholland, filed a report after the conclusion of the hearing, which found that Petitioner did not establish the defense claimed in his verified answer under 22 N.Y.C.R.R. 691.3 (Pet. App. C).

By Order dated February 7, 2000, the Appellate Division of the Supreme Court of the State of New York, Second Department, confirmed the findings of the Special Referee and suspended Petitioner for a period of one year, and conditioned his reinstatement in New York upon his reinstatement in Florida. (Pet. App. 2a).

The New York State Court of Appeals, by Order dated October 26, 2000, rejected Petitioner's Motion for Leave to Appeal (Pet. App. A).

REASONS TO DENY WRIT

Petitioner has received reciprocal discipline by the Appellate Division of the Supreme Court of the State of New York, Second Department, after being offered due process pursuant to the Rules of the Appellate Division, Second Department, Sec. 691.3(a) in that Petitioner demanded and received a hearing to present his defenses to reciprocal discipline. It was Petitioner's burden at such a hearing to present his defenses to the Special Referee. Rather than present defenses, Petitioner chose to present two witnesses who testified regarding the severity of the sanctions. Therefore, the Special Referee properly held that Petitioner had not established his defenses and the Appellate Division, Second Department sustained those findings after their review and imposed discipline. The claims made by Petitioner before this Court appear to be based on a footnote allegedly contained in the advance sheets of an unrelated case *Florida Bar v. Vernell,* 721 So.2d 705 (Fla. 1998) that neither mentions *Florida Bar v. Solomon,* 711 So.2d 1141 (Fla. 1998) nor appeared in the official report. Petitioner offers his own self-serving speculation as to why the footnote was omitted. However, none of his claims have anything to do with his failure to present defenses at the hearing, which he demanded and received. Rather, this is Petitioner's latest attempt to re-litigate *Florida Bar. v. Solomon,* 711 So.2d 1141 (Fla. 1998).

ARGUMENT

POINT I

RECIPROCAL DISCIPLINE WAS PROPERLY IMPOSED BY THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND DEPARTMENT

Based upon all the evidence presented to the Court, the Appellate Division, Second Department rendered a decision imposing discipline upon Petitioner by Order dated February 7, 2000. The Appellate Division did not abuse its discretion inasmuch as the licensing and supervisory power over attorneys is vested exclusively within the Appellate Divisions (22 N.Y.C.R.R. 691). The Appellate Division, Second Department granted Petitioner's demand for a hearing and afforded him the opportunity to prove his defenses pursuant to the Rules of the Appellate Division, Second Department. Sec 691.3(c). The Petitioner failed to establish his defenses at the hearing.

Petitioner has already sought review of his claimed constitutional violations by the Florida Supreme Court before this Honorable Court in a prior Writ of Certiorari and the Certiorari was denied. *Solomon v. Florida Bar,* ____ U.S. ____ (1998), 119 S.Ct 411.

CONCLUSION

A disciplinary sanction was imposed by the Appellate Division, Second Department after Petitioner was afforded a full hearing in this matter in addition to the submission of memoranda and various motion practice. The maintenance of the honor and integrity of the profession warrant that Petitioner's sanctions remain in place.

The Petition for a Writ of Certiorari should be denied.

Dated: Syosset, New York
February 1, 2001

Respectfully Submitted,

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